

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-442

JOY LUEANN BROWN and WILLIAM
NEWMAN

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered September 17, 2008

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT,
[NO. JV 2006-208]

HONORABLE KEN D. COKER, JR.,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellants Joy Brown and William Newman have each appealed from the order of the Pope County Circuit Court terminating their parental rights to their children, W.N. and T.N. The arguments raised by the appellants are that there is insufficient evidence to support the circuit court's finding that termination of parental rights was in the children's best interests and that grounds for termination exist. We affirm.

Appellants are the parents of a daughter, T.N., born September 1, 2003, and a son, W.N., born May 19, 2006. There was a prior history with the Department of Human Services because W.N. was born with illegal substances in his system, and Brown continued to use marijuana while breast feeding. The present case arose on September 23, 2006, when DHS placed a seventy-two-hour hold on the children. According to the affidavit filed in support of the petition, the hold was taken because Brown was unwilling to cooperate with

DHS; W.N. had been admitted to a hospital for a life-threatening respiratory condition; Brown tested positive for drug use; Brown reported that she was bipolar and paranoid schizophrenic and had not taken her medications in over a month; Brown also reported that she would be residing in the home of an individual with a “true” finding for sexual abuse of a child; and Brown had not followed up with W.N.’s needed immunizations.

On September 25, 2006, a petition for emergency custody was filed. That same date an emergency order placed custody of the children with DHS. Probable cause was later found to have existed in the removal of the children. Brown was ordered to submit to a substance-abuse assessment and comply with the recommendations; obtain employment and suitable housing; submit to a psychological evaluation and comply with the recommendations; take her medications as prescribed by her physician; and keep DHS advised of her current residence. Both parents were ordered to submit to random drug testing.

On October 30, 2006, an adjudication hearing took place. The court found that the children were dependent-neglected. The goal of the case was reunification, and the parents were allowed visitation.

On November 27, 2006, a review hearing was held. Brown was allowed to have supervised visitation two hours twice per week. Newman’s visitation was also to be supervised, but no duration was specified. DHS was given the discretion to either terminate visitation early or to allow Newman unsupervised visitation, depending on the results of drug tests.

On February 5, 2007, another review hearing was held. Both parents were allowed to

have supervised visitation contingent upon a negative drug screen. Brown was further ordered to submit to a medication-management evaluation and comply with the recommendations. She was also ordered to comply with the recommendations of her substance-abuse assessment; submit to a psychological evaluation and comply with the recommendations of the counselor; attend NA/AA meetings; complete counseling; cooperate with budgeting classes provided by DHS; and submit to random drug testing. Newman was ordered to obtain suitable housing.

On June 11, 2007, a third review hearing was held. The court continued its order that the parents' visitation would be contingent upon negative drug screens and that Brown give twenty-four hours' notice to DHS of her intent to visit.

The goal of the case was changed to termination of parental rights after a September 24, 2007 permanency-planning hearing. Brown's visitation was set at one day per week from 1:30 p.m. to 5:30 p.m. Newman's visitation was left unchanged from previous orders.

On September 28, 2007, DHS filed its petition to terminate parental rights. The petition alleged three grounds for termination, including that the children had been adjudicated dependent-neglected and had continued out of the parents' home for twelve months and, despite a meaningful effort by DHS to rehabilitate the home and correct the conditions which caused removal, those conditions had not been remedied by the parents.

On January 4, 2008, the termination hearing took place. Carolyn Mooney, the DHS case worker, testified that Brown, Newman, Newman's girlfriend, and the girlfriend's child were residing together even though Brown was still married to David Brown. Mooney

added that, other than the time Brown resided with her husband, Brown had no permanent residence, and was living with friends, relatives, and in motels. She said that Brown, who only had a pay-as-you-go cell phone, often failed to keep DHS apprised of her residence. Although Brown was employed, Mooney stated that Brown had spent more time unemployed and applying for disability than being employed.

Mooney testified that DHS offered Brown visitation but that she only visited twelve times since September 2006. Some of the visitation was missed because Brown tested positive for drug use, did not attend other visits, and moved without informing DHS of her whereabouts so that DHS could inform her of the visitation schedules. Mooney said that Brown had failed to provide proof that she attended NA/AA meetings or inpatient substance-abuse counseling. According to Mooney, Brown told her in a December 7, 2007 conversation that she was no longer taking her medications. Brown also failed to comply with the court's order to seek inpatient substance-abuse treatment after failing a drug screen, as well as failing other drug screens. Mooney said that there was potential harm to the children if they were returned to Brown's care because she had failed to take advantage of services offered by DHS and continued to test positive for drugs. According to Mooney, Brown was tested for drug use twenty-nine times, with seventeen positive tests.

As for Newman, Mooney testified that Newman's visitation was, at first, supervised by DHS before he was allowed unsupervised visits at his home. Those unsupervised visits were terminated over concerns about Newman's pit bulls. Newman last exercised any type of visitation in January 2007. She said that she told Newman he could have visits with the

children if he did not use marijuana. She also said that Newman had failed to submit proof that he attended five NA meetings over a three-month period. Mooney said that she believed that there was potential harm to the children if they were returned to Newman because of the drug issue, as well as Newman's failure to visit with the children. She said that the children did not know Newman. Mooney also said that there were times when she did not know of Newman's whereabouts and had to contact Newman through his attorney.

Mooney recommended that the parental rights of both parents be terminated. She said that the children were together in the same foster home and that they were well adjusted. According to Mooney, the children had bonded with the foster parents, who had expressed an interest in adopting the children.

Sandy Lee, the CASA volunteer assigned to the case, also recommended that the court terminate the parents' rights. Her impression of the foster home was that it was an extraordinary environment in which the children were doing extremely well. She also stated that the children had bonded with the foster parents. Lee said that it was difficult for her to maintain contact with Brown, noting that Brown's involvement with this case started to decline in January and February of 2007. She was also concerned about the number of positive drug tests Brown had, as well as Brown's statement that she was continuing to use drugs. She was concerned about Brown's failing to attend counseling or NA/AA sessions or to seek inpatient treatment. She said that Newman had not visited the children since January 2007 and that Newman had not contacted her since December 2006. Lee opined that there was potential harm to the children if they were returned to either parent. Her conclusion was

that termination was in the children's best interests.

Joy Brown testified that there were several occasions when the foster parents could not bring the children for visitation. She also said that frequently DHS did not have personnel available to administer a drug test. She also said that she had always contacted Carolyn Mooney or left messages for her, and that she did not have the same problem contacting DHS social-service aide Melody Mayo. She said that there was some confusion over whether the inpatient treatment was to be for possible mental illness or for her drug addiction. She testified that she never denied that she smoked marijuana but was in denial until recently over her methamphetamine use.

William Newman testified that he lived with his girlfriend, along with the girlfriend's child and Brown. He said that he was visiting regularly when the case was first opened but that the visitation stopped in January 2007, because he had pit bulls and the court had ordered that the children not be around the dogs. He testified that he attempted to contact Carolyn Mooney a couple of times since September 2007. He also acknowledged testing positive for marijuana on the day of the hearing and that his drug use was a problem but that he had not attended NA/AA meetings or counseling to deal with it. He also said that he was told in April 2007 that he could visit if he could pass drug tests. He admitted that he had been unable to pass a drug test since that time.

On January 18, 2008, the court issued an order terminating the parental rights of both parents. The parents separately filed timely notices of appeal.

We review termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't*

of *Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

For their first point, Brown and Newman each make the argument that the circuit court erred in finding that termination of parental rights was in the children's best interests. In their briefs to this court, Brown and Newman both conceded that the children were adoptable. However, they specifically argue that there was insufficient evidence to support the court's finding that the children would be at risk if returned to either parent's custody.

The circuit court noted that both parents had missed visitation because of their drug use. Continuing drug use shows both an indifference to remedying the problems plaguing the family and potential harm to the children. *Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). Furthermore, the risk of potential harm is but a single factor for the court to consider in its analysis. *Id.* There is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all

factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *McFarland v. Arkansas Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). The circuit court expressly considered both factors mandated by the statute before concluding that termination of Brown's and Newman's parental rights was in the best interests of T.N. and W.N. Therefore, we cannot say that the circuit court was clearly erroneous.

Brown and Newman next challenge the sufficiency of the evidence to support the grounds for termination. The circuit court found that three grounds had been established. Only one ground is necessary to terminate parental rights. *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007).

Although it is undisputed that the children had been out of their parents' custody for more than twelve months, Brown and Newman both contend that this ground cannot be relied upon because there was no proof that DHS made reasonable efforts to provide them with reunification services. Their argument is without merit. There was testimony that DHS offered them such services as transportation services, visitation with the children, medical services, and parenting classes, among others. Moreover, they cannot complain because of their failure to remain in contact with DHS so that it could provide services. *Cobbs v. Arkansas Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004).

Because there is sufficient evidence to support one ground for termination of Brown's and Newman's parental rights, we need not discuss the remaining issues.

Affirmed.

VAUGHT and BAKER, JJ., agree.

